

FACTSHEET

TITLE: CHANGE OF ZONE NO. 05026A, an amendment to the APPLE'S WAY PLANNED UNIT DEVELOPMENT, requested by Apple's Way, LLC and Uno Properties, to adjust setbacks and the maximum height in the B-2 Planned Neighborhood Business area, on property generally located at S. 66th Street and Highway 2.

STAFF RECOMMENDATION: Conditional approval.

ASSOCIATED REQUEST: Letter of Appeal to Apple's Way Preliminary Plat No. 05016, Conditions #1.1.4 and #1.2.2.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 11/09/05
Administrative Action: 11/09/05

RECOMMENDATION: Conditional approval, with amendments (7-1: Krieser, Pearson, Larson, Carroll, Strand, Sunderman and Carlson voting 'yes'; Esseks voting 'no'; Taylor absent).

1. This proposed amendment to the Apple's Way Planned Unit Development seeks three additional waivers: a) adjust the front yard setback in the B-2 area to zero feet; b) adjust the rear setback in the B-2 area to 30' where adjacent to R-1 Residential zoning; and adjust the maximum height in the B-2 area from 40' to 52' for buildings in excess of 100,000 square feet for an architectural feature over the main entrance of the "big box" store on Lot 5, Block 3 in the northwest corner of the B-2 area.
2. The staff recommendation of conditional approval is based upon the "Analysis" as set forth on p.4-5, concluding that: a) the adjustment to the front yard is typical where the lot and building envelope are surrounded by shared parking lots and impacts only those businesses located internal to the center; b) the waiver to the setback in the B-2 from the R-1 is offset by increased landscaping to mitigate the impact; and c) the height waiver is only required for architectural features that exceed 40', and the impact should not be significant.
3. The applicant's testimony is found on p.9, wherein the applicant requests an amendment to delete Condition #1.1.2 (Show a 50' setback in the B-2 adjacent to the AGR and R-1) because it conflicts with Condition #2, and an amendment to Condition #1.1.3 to reflect that the height of the building does not exceed 40' except the maximum allowed height is increased to 52' to accommodate architectural features (See Minutes, p.9-10 and p.25).
4. There was no testimony in opposition.
5. The record consists of a letter from Robert Otte on behalf of the Country Meadows Homeowners Association, which states, in part: "...my remarks are neither an endorsement of or to be used in opposition to the project. There is still significant opposition to this development, but....I am reporting that the developer has complied with the Commitment which was necessary to any support of this project." (See, p.26-27).
6. The staff agreed with the proposed amendments to the conditions of approval.
7. On November 9, 2005, the majority of the Planning Commission agreed with the staff recommendation and voted 7-1 to recommend conditional approval, as set forth in the staff report dated October 26, 2005, with the amendments requested by the applicant (Krieser, Pearson, Larson, Carroll, Strand, Sunderman and Carlson voting 'yes'; Esseks voting 'no'; Taylor absent).
8. The Site Specific conditions of approval required to be completed prior to scheduling this application on the City Council agenda have been satisfied.

FACTSHEET PREPARED BY: Jean L. Walker

REVIEWED BY: _____

REFERENCE NUMBER: FS\CC\2005\CZ.05026A

DATE: December 5, 2005

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LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for November 9, 2005 PLANNING COMMISSION MEETING

****As Revised and Recommended for Conditional Approval
by Planning Commission: November 9, 2005****

- P.A.S.:** Change of Zone #05026A Apple's Way PUD
- PROPOSAL:** To amend the Apple's Way PUD to include waivers not previously approved.
- LOCATION:** South 66thth Street and Highway 2
- LAND AREA:** Approximately 61.7 acres.
- WAIVERS:**
1. Adjust the front yard setback in the B-2 to 0' except along Highway 2 where a 175' setback to parking and a 200' setback to buildings will be retained.
 2. Adjust the rear setback in the B-2 from 50' to 30' where adjacent to residential zoning.
 3. Adjust the maximum height in the B-2 from 40' to 52' for buildings in excess of 100,000 square feet.
- CONCLUSION:** The adjustment to the front yard is typical where the lot and building envelope are surrounded by shared parking lots and impacts only those businesses located internal to the center. The waiver to the setback in the B-2 from the R-1 is offset by increased landscaping to mitigate the impact. The height waiver is only required for architectural features that exceed 40', and the impact should not be significant.

RECOMMENDATION:

CONDITIONAL APPROVAL

Waivers

- | | |
|---|----------|
| 1. Adjust front yard setback in the B-2 to 0' | Approval |
| 2. Adjust rear setback in the B-2 to 30' where adjacent to R-1 | Approval |
| 3. Adjust maximum height in the B-2 to 52' for buildings in excess of 100,000 | Approval |

GENERAL INFORMATION:

LEGAL DESCRIPTION: See attached legal description.

EXISTING LAND USE AND ZONING: Vacant R-3, B-2

SURROUNDING LAND USE AND ZONING:

North:	Bank, Residential	AGR, O-3
South:	Vacant, Residential	AGR, R-1
East:	Residential	AGR, R-1
West:	Commercial	H-4

ASSOCIATED APPLICATIONS: PP#05016 - A request for a preliminary plat for 42 lots consistent with the previously approved CZ#05026 Apple's Way PUD.

HISTORY: June 13, 2005 - CZ#05026 Apple's Way PUD was approved for 32 single-family lots in R-3 and 10 lots in B-2. The preliminary plat was specifically not waived with the approval of the PUD.

June 13, 2005 - CPA#04010 was approved to change the land use designation from residential to commercial for the west 39 acres of this site.

July 14, 2003 - CPA#03012 to change the land use designation on this site from urban residential to open space and commercial was withdrawn. It had received a 6-0 vote for denial from the Planning Commission.

March 26, 2001 - A request to include a change in the land use designation from urban residential to commercial for this site was considered but not adopted as part of the Southeast Lincoln/Highway 2 Subarea Plan.

May 2, 1994 - CZ#2085 was denied by City Council to change the zoning of this property from AGR to R-3 and B-5.

May 8, 1979 - The zoning was changed from AA Rural and Public Use to AGR Agriculture Residential with the 1979 Zoning Update.

COMPREHENSIVE PLAN SPECIFICATIONS:

Page F105 - Lincoln Area Street and Roadway Improvements 2025 - Designates that portion of Highway 2 from South 56th Street to South 120th Street for 'Corridor Protection'.

Page F111 - Nebraska Highway 2 Corridor Protection - The roadway within the corridor could be further improved or the corridor could serve as a multi-modal or multi-use area in the future. Corridor preservation should include retention of all property within the State's present right of way area, denial of any additional access points to the roadway, elimination of existing access points should such opportunities arise, and the acquisition of additional right of way should it become available.

Page F156 - Subarea Planning - By reference the Southeast Lincoln/Highway 2 Subarea Plan is included in the Comprehensive Plan.

Southeast Lincoln/Highway 2 Subarea Plan:

Executive Summary - There has been significant effort spent over the past several years to study the transportation impact of commercial development in this area. This subarea plan provides for approximately 2.3 million square feet of additional space. That is more than double the amount of space in Gateway Mall and is in addition to the existing 1.4 million SF in the vicinity of Edgewood. Proposals to substantially increase this amount of commercial space may argue that more commercial sites can be developed without any traffic impact on the transportation network. While the transportation impact will continue to be reviewed, it is well established that

as commercial space increases there will be an impact on the road network. One of the most important actions a community can take to address concerns about traffic congestion is to make wise land use decisions in advance of development.

Page 6 - Provide Effective Land Use Transitions - Provide appropriate transitions from commercial to residential land uses. Within commercial areas, office and lower intensity commercial uses along with appropriate buffer areas should be developed as a transition to adjacent residential areas. In some areas, special residential” uses should be provided to adjacent lower density residential uses. Special residential uses could include churches, domiciliary care facilities, retirement apartments, child care facilities or townhomes. In more urban settings, which are further from existing single family residences, apartments may also be appropriate as a special residential uses.

Page 9 - Efficient use of transportation network - Land use decisions must consider the impacts upon the transportation network. The proposed uses are scaled to the capacity of Highway 2 and 84th Street and to retain the community’s desired Level of Service C. Highway 2 is not only used by local residents, it also serves the community and region.

- Promote a Desirable Entryway - Standards for landscaping and architecture should be developed to promote a desirable entryway into Lincoln along Highway 2 — however, standards alone will have little impact if land use decisions strip the area with commercial uses, signs and cause the widening of Highway 2 to six lanes. It will be difficult to have enough landscaping to reduce the visual impact of potentially 9 or 10 traffic lanes (6 through, dual left and right turn lanes.) An open space corridor (approximately 200 feet from centerline) is shown along Highway 2, adjacent to the new commercial uses, as one part of having a desirable entryway with commercial development.

Page 10 - Commercial transition - Within commercial areas, office and lower intensity uses along with appropriate buffer areas should be developed as a transition to adjacent residential uses.

Page 13 - Entryway Corridor - To preserve the entryway corridor, the land use and transportation decisions are equally important as landscaping or architectural standards.

UTILITIES: The site can be served by municipal water and sanitary sewer.

TOPOGRAPHY: There is a hill along the west edge of the site, with small drainage ways on either side of it flowing from northeast to southwest.

ANALYSIS:

1. This request proposes to modify the approved PUD by seeking three additional waivers. All other terms and conditions of the PUD as originally approved remain in effect.
2. The B-2 setbacks are as follows: 50' front yard; 0' side yard, or 20' when abutting residential; and, 0' rear yard, or 50' when abutting residential. The first waiver request is to adjust the setbacks to 0' inside the commercial center to allow buildings to be built to lot lines, but retains a 175' setback to parking and a 200' setback to buildings along Highway 2. This request is typical for commercial centers, provided a perimeter setback is maintained to protect adjacent residential uses. It is appropriate to waive the setbacks in the B-2 except along Highway 2 where the greater setback is being retained.
3. The second waiver request is to adjust the required setback in the B-2 from 50' to 30' where it is adjacent to R-1. The justification provided notes that the reduced setback will allow for adequately-sized building envelopes in the B-2, and will be offset by increased screening. The required screen is to be increased from 60% to 100% to mitigate the reduced setback.

4. The third waiver request seeks an adjustment to the maximum height from 40' to 52' for buildings in excess of 100,000 square feet in floor area. This adjustment is specifically for the approximately 135,000 square foot "big box" store shown on Lot 5, Block 3 in the northwest corner of the B-2. The building itself is shown at approximately 32' and does not exceed the maximum height of the district. As shown on the attached exhibit, the peak for the wall over the main entrance is the only portion that exceeds the maximum height, and is the reason for the request. When measured according to LMC 27.03.130, the proposed height is closer to 45'. However, variables such as final site grading can affect the measurement, and the applicant is requesting the waiver to the highest point to ensure it can be accommodated at the time of building permit. Located at the northwest portion of the site, the building is adjacent to H-4 to the west, and the impact of the waiver which only affects a portion of the building is not significant.
5. Minor revisions to the General Notes are needed and are included in the conditions of approval.

CONDITIONS:

Site Specific:

1. After the applicant completes the following instructions and submits the documents and plans to the Planning Department and the plans are found to be acceptable, the application will be scheduled on the City Council's agenda:
 - 1.1 Revise the plans as follows:
 - 1.1.1 Show a 175' setback to parking and a 200' setback to buildings along Highway 2 as measured from the centerline of Highway 2.
 - 1.1.2 ~~Show a 50' setback in the B-2 adjacent to the AGR and R-1. (**Per Planning Commission, at the request of the applicant, 11/09/05**)~~
 - 1.1.3 Revise Note 34 to reflect that the height of the building does not exceed 40', except the maximum allowed height is increased to 52' to accommodate architectural features. (**Per Planning Commission, at the request of the applicant, 11/09/05**)
 - 1.1.4 Revise the General Notes to be consistent with the approved plan for CZ#05026 Apple's Way PUD.
2. This approval adjusts setbacks in the B-2 to 0' except abutting a residential district which remains at 30', and along Highway 2 which is 175' to parking and 200' to buildings as measured from the Highway 2 centerline, and adjusts the maximum allowed height from 40' to 52' to accommodate architectural features.
3. If any final plat on all or a portion of the approved planned unit development is submitted five (5) years or more after the approval of the planned unit development, the city may require that a new planned unit development be submitted, pursuant to all the provisions of section 26.31.015. A new planned unit development may be required if the subdivision ordinance, the design

standards, or the required improvements have been amended by the city, and as a result, the planned unit development as originally approved does not comply with the amended rules and regulations.

4. Before the approval of a final plat, the private roadway improvements, sidewalks, sanitary sewer system, water system, drainage facilities, land preparation and grading, sediment and erosion control measures, storm water detention/retention facilities, drainageway improvements, street lights, landscaping screens, street trees, and street name signs, must be completed or provisions (bond, escrow or security agreement) to guarantee completion must be approved by the City Law Department. The improvements must be completed in conformance with adopted design standards and within the time period specified in the Land Subdivision Ordinance.

5. Permittee agrees:

to complete the paving of all public streets and private roadways shown on the final plat within two (2) years following the approval of this final plat.

to complete the installation of sidewalks along both sides of all interior streets and private roadways as shown on the final plat within four (4) years following the approval of the final plat.

to complete the public water distribution system to serve this plat within two (2) years following the approval of the final plat.

to complete the public wastewater collection system to serve this plat within two (2) years following the approval of the final plat.

to complete the enclosed public drainage facilities shown on the approved drainage study to serve this plat within two (2) years following the approval of the final plat.

to complete land preparation including storm water detention/retention facilities and open drainageway improvements to serve this plat prior to the installation of utilities and improvements but not more than two (2) years following the approval of the final plat

to complete the installation of private and private street lights within this plat within two (2) years following the approval of the final plat.

to complete the planting of the street trees along all streets and along Highway 2 within four (4) years following the approval of the final plat.

to complete the planting of the landscape screen along Highway 2 within this plat within two (2) years following the approval of the final plat.

to complete the installation of the street name signs within two (2) years following the approval of the final plat.

to complete any other public or private improvement or facility required by Chapter 26.23 (Development Standards) of the Land Subdivision Ordinance in a timely manner which inadvertently may have been omitted from the above list of required improvements.

to submit to the Director of Public Works a plan showing proposed measures to control sedimentation and erosion and the proposed method to temporarily stabilize all graded land for approval.

to complete the public and private improvements shown on the Planned unit Development.

to retain ownership of or the right of entry to the outlots in order to maintain the outlots and private improvements on a permanent and continuous basis and to maintain the plants in the medians and islands on a permanent and continuous basis. However, the subdivider may be relieved and discharged of this maintenance obligation upon creating, in writing, a permanent and continuous association of property owners who would be responsible for said permanent and continuous maintenance. The subdivider shall not be relieved of such maintenance obligation until the private improvements have been satisfactorily installed and the documents creating the association have been reviewed and approved by the City Attorney and filed of record with the Register of Deeds.

to continuously and regularly maintain the street trees along the private roadways and landscape screens.

to submit to the lot buyers and home builders a copy of the soil analysis.

to pay all design, engineering, labor, material, inspection, and other improvement costs including any costs for any improvements in Highway 2 required to allow turning movements into this site.

to comply with the provisions of the Land Preparation and Grading requirements of the Land Subdivision Ordinance.

to protect the trees that are indicated to remain during construction and development.

to properly and continuously maintain and supervise the private facilities which have common use or benefit, and to recognize that there may be additional maintenance issues or costs associated with providing for the proper functioning of storm water detention/retention facilities as they were designed and constructed within the development, and that these are the responsibility of the land owner.

to relinquish the right of direct vehicular access to Highway 2 except as shown.

General:

6. Before receiving building permits:

6.1 The permittee shall have submitted a revised and reproducible final plan and the plans are acceptable:

6.2 The construction plans shall comply with the approved plans.

6.3 Final plats shall be approved by the City.

Standard:

7. The following conditions are applicable to all requests:
 - 7.1 Before occupying the dwelling units and commercial buildings all development and construction shall have been completed in compliance with the approved plans.
 - 7.2 All privately-owned improvements shall be permanently maintained by the owner or an appropriately established owners association approved by the City Attorney.
 - 7.3 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
 - 7.4 This ordinance's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
 - 7.5 The City Clerk shall file a copy of the ordinance approving the permit and the letter of acceptance with the Register of Deeds. The Permittee shall pay the recording fee in advance.
8. The site plan as approved with this resolution voids and supersedes all previously approved site plans, however all resolutions approving previous permits remain in force unless specifically amended by this resolution.

Prepared by:

Brian Will, 441-6362, bwill@lincoln.ne.gov
Planner
October 26, 2005

Applicant/

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CHANGE OF ZONE NO. 05026A,
AMENDMENT TO THE APPLE'S WAY
PLANNED UNIT DEVELOPMENT,
and
PRELIMINARY PLAT NO. 054016,
APPLE'S WAY

PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 9, 2005

Members present: Krieser, Esseks, Pearson, Larson, Carroll, Strand, Sunderman and Carlson; Taylor absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None

Additional information submitted for the record: Brian Will of Planning staff submitted a letter from Robert Otte on behalf of the Country Meadows Neighborhood Association, stating the position of the surrounding homeowners in the area.

Proponents

1. Tom Huston appeared on behalf of **Apple's Way LLC and UNO Properties, Inc.**, the applicants for the PUD which was heard before this Commission and approved by the City Council in June of 2005. When the original PUD application was filed, it was a concept plan and they had not yet completed the engineering and did not request a waiver of the preliminary plat. The engineering has now been completed and these amendments to the PUD are for setback adjustments and height restriction and the preliminary plat has been submitted for consideration.

Huston referred to the letter from the County Meadows Homeowners Association and advised that the applicants have been working with the neighborhood association to honor the previous commitments made on the PUD. They have attempted to embody those commitments through the preliminary plat and final plat and restrictive covenants. The discussions with the neighborhood since the public hearings last spring have been very productive and they have made a lot of progress in completing the commitments to the neighbors.

Huston submitted proposed amendments to the conditions of approval on the amendment to the PUD and he believes staff is in agreement:

1.1.2 ~~Show a 50' setback in the B-2 adjacent to the AGR and R-1.~~

1.1.3 Revise the General Notes Note 34 to be consistent with the approved plan for Change of Zone No. 05026, Apple's Way PUD reflect that the height of the building does not exceed 40' except the maximum allowed height is increased to 52' to accommodate architectural features.

Condition #1.1.2 needs to be deleted because it conflicts with Condition #2. The revisions to Condition #1.1.3 deal with the height issue. There is one commercial user whose building has an architectural feature that will exceed the 40' height limitation. It is a front facade architectural feature and the balance of the development will comply with the height limitations.

Huston also submitted proposed amendments to the preliminary plat:

- ~~1.1.3. Provide a name for the unidentified street at the southwest corner of the plat and label it as a private roadway if it is not a public street.~~
- ~~1.1.4 Show how the required detention capacity is maintained with the unidentified street at the southwest corner of the plat is built.~~
- 1.1.5 Label all the roads in the B-2 and R-1 zones as private roadways.
- 1.1.6 Dimension and number all lots and add a note that all lot lines are approximate.
- 1.1.8 Revise the landscape plan on Sheet 5 of 5 to show all the required landscape screen between the B-2 and R-1 located in the B-2 for that area located south of Empire Lane. Add a note that the landscape screen between the B-2 and R-1 located north of Empire Lane shall be located to provide the best screening effect due to the slope. All of the landscape screen shall be maintained by the owners of the B-2 zoned land or an association of such owners.
- 1.2 Make corrections to the reasonable satisfaction of Public Works and Utilities, which shall be limited to:
 - 1.2.1 Extend the sanitary sewer to Highway 2 in a location that allows for the further service of upstream area north of Highway 2.
 - 1.2.2 Revise the plan to show the right-turn lane in Highway 2 at South 66th Street as 150' long in accordance with the approved Planned Unit Development.

Huston stated that he understands that the Planning Commission does not have the authority to waive the sidewalk located north of McIntosh Road, and that will be taken up with the City Council. (***Editorial Note:*** The staff is recommending denial of this waiver).

With regard to the deletion of Conditions #1.1.3 and #1.1.4, Huston pointed out that the City Council had asked the applicant to dedicate an easement for a possible road location at the southeast corner of the property during the debate on the original PUD. It was the developer's proposal 18 months ago to make a connecting road from Highway 2 to 56th Street, but multiple issues arose, i.e. potential railroad track crossing; potential problems with wetlands; floodplain development that would have required construction of a bridge; the potential connecting point to S. 56th Street was where a current house is located. That potential road connection became too problematic so they ceased discussion and the City Council voted to require at least the dedication of an easement. Consequently, the developer did dedicate the easement, but they did not try to engineer it around the detention cell, which is going to be the least of the concerns if and when this road is constructed. Therefore, Huston requested that Conditions #1.1.3 and #1.1.4 be deleted.

The proposed amendment to Condition #1.1.8 has to do with the landscape screen. All of the

landscape screen south of Empire Lane (east/west road in residential area) will be located on the B-2 zoning. Huston proposed an amendment so that the landscape screen located north of Empire Lane is allowed to be relocated because there is a huge grade differential. He believes they have this worked out with staff.

With regard to the proposed Condition #1.2.2 (the right-turn lane in Highway 2 at South 66th Street being 150' long), during the approval of the original PUD, the developer had offered to construct a deceleration lane on Highway 2 to connect to S. 66th Street, which was part of their commitment to the neighborhood. Staff had wanted to increase that right-turn lane to 200'. Huston submitted that even if the design standard has changed in the meantime, a 150' deceleration lane was approved with the original PUD and the 200' length should not be made a requirement of this plat.

Esseks inquired about the enhanced screening to offset the reduction in the rear setback. Huston explained that the design standards require a 60% screen between the commercial and residential, and their commitment to the neighborhood is to make a 100% screen, to the extent possible. The landscape screen will go beyond and exceed the required design standard. It will cover the entire border. Huston did not know how high and thick it might be. Tim Gergen of Olsson Associates advised that the screen would be 100% thick and you will not be able to see through it. The trees will be 8-10 feet high and the shrubs would be 2-3 feet in height.

Pearson noted that the road connection is shown through the proposed detention area. What is the thinking? Was there no other place to put the detention? Huston stated that the issue arose just prior to the public hearing before the City Council on the original PUD and the developer agreed to dedicate the easement. The detention could be moved, but there is probably a limitation on how many places that easement could be located. The only way that road connection could be built (if the other problems are resolved) would be to rework or relocate the detention facility where it would have to be spanned with a bridge, and that would be difficult. The discussion with the City Council was that the city did not want to have to condemn the necessary right-of-way for a street connection, if the connection is ever built. At this point, the developer is willing to dedicate that easement.

It was clarified that the connection off the roundabout to the Trade Center will be made.

Pearson recalled discussions about a gate going into Country Meadows. Huston stated that the resolution of that issue turned out better than they could have hoped for. It is a one-way traffic circle – the traffic going to the west will have ability to proceed to the west so that Country Meadows will have access to the circle, but it is designed and will be constructed to prevent traffic going the opposite direction. This is a much better result than a private access gate.

Carlson questioned the addition of “reasonable” satisfaction in Condition #1.2. What is “reasonable”? Huston explained that they just don’t want it to be a blank check. That is why he is asking to specify the requirements and that is why he incorporated the requirements that were in the Public Works comments into the conditions.

There was no testimony in opposition.

Staff questions

Carroll asked staff to respond to the proposed amendments. Brian Will stated that generally, the staff is in agreement with the amendments proposed by the applicant, except the removal of Condition #1.1.4 on the preliminary plat, which deletes the detention capacity relative to the street connection to the southwest corner.

Carroll inquired about the deletion of the requirement to show the 50' setback in the B-2 adjacent to the AGR and R-1 in Condition #1.1.2 on the PUD. Will advised that it is shown as 30' on the plan so this condition is no longer necessary.

Pearson inquired whether there have been other places where the height has been increased. Will pointed to one example, i.e. West Gate Bank in this immediate vicinity had a height exception, but it was in conjunction with a CUP as opposed to a PUD. It was to allow the architectural feature on that building.

With regard to the deletion of Condition #1.1.4, Ray Hill of Planning staff stated that it is the staff's concern that if they do not design the roadway through the detention system, there may be difficulty in finding a location on the site for the detention that would be required. They are not being required to build the road at this time. All we are saying is that the plan should show how it would be constructed if the road would be required. In doing so, the community has the assurance that the detention would then be taken care of if the road was ever required. If we don't have the design to show the road constructed through the area and the impact it would have on the detention facility, we have no idea where the additional land would come from for that detention.

Dennis Bartels of Public Works also recalled that when the City Council required an easement, he interpreted that as meaning it would be a practical location for the street. The fill it would take to put the road in is probably below the bottom of the detention and it showed an area for mitigation of wetlands. If they show the grading plan to eliminate the potential fill and mitigate the wetlands elsewhere, then the easement is probably acceptable. He assumes the City Council was looking for a practical location and the practical way would be to do it with fill. If they show the fill and provide detention over and above the area that could potentially be occupied by fill and showed their wetland mitigation out from under that fill, Public Works would be satisfied. As shown, it is not practical.

Carroll inquired about the request to change the length of the right-turn lane from 200' to 150'. Bartels recalled that the 150' was also something added by the City Council without any reaction from Public Works. If Public Works was building the turn lane on a 55 mph highway such as Highway 2, they would build it at 200 to 250 feet. Public Works did not have opportunity to react at Council, but Bartels is now responding that the 150' was too short for the speed. While building it, it should be built at the right length to maximize the deceleration and protection for the right turn lane. The extra length is not for storage of the cars but extra room to reduce the travel speed to make the turn.

Response by the Applicant

Huston renewed his request to delete Conditions #1.1.3 and #1.1.4, because they have complied with the request of the City Council. He believes that there is .001 percent probability that that street connection would ever be made and he does not believe it should be necessary to engineer this site to compensate for that potential. Even to make this connection it would have to cross city-owned park land, which raises more issues to ever build a street on it. It seems silly to require redesign of this site for that .001 percent probability that that street connection would ever be made.

As far as the 150' versus 200' right turn lane, Huston stated that he was told that the design standard had changed from June, when the PUD was approved, until now to require 200' as opposed to 150'. This developer complied with the design standard back in June. If that design standard changed, that is not this developer's responsibility. He believes there are good reasons to stick with the agreement made at the City Council level.

With regard to the deletion of Condition #1.1.4, Strand noted that Public Works does not want a bridge, but the developer will need a lot more room for detention. Huston said they would have to redesign the entire site. The detention cell is sized appropriately for the commercial areas. If they have to relocate that detention, even if the road is ever built, they would have to start from scratch.

Pearson suggested that it is disingenuous to show an easement that can't be built. And they have to have detention. Huston reiterated that Jon Camp did not want to have the city in the position of foreclosing the possibility of having that road constructed. Pearson wondered whether there is no other place to put an easement that follows the request of the City Council in a more realistic way. Gergen responded that they did a thorough design investigation of this connection because they thought this would be a great advantage to the city and to the site, but after doing the investigation, they are left with very strict guidelines on how to cross the railroad. There is a sight distance that must be retained and there is a bridge on the railroad tracks that they want to avoid. They would have to build a substantial bridge structure across Beal Slough. There is an existing house on London Road that would have to match up with the existing London Road intersection, which would cause the taking of that house. Other than that, they would have to go through the Country Meadows outlot and another property to make that connection.

Huston also pointed out that there is a very nice existing tree stand in the detention cell. They created an island in the middle of the detention cell because of the crop of cottonwoods they wanted to save to help keep as much of the natural vegetation to screen Country Meadows. The developer made the commitment to Country Meadows to retain the existing tree stand as much as possible. Huston does not believe the street will ever be built. It seems ludicrous to design the entire site for the remote possibility of that road connection.

Huston also clarified that the railroad is not active. However, OPPD wants to keep it open because they use it as a bidding tool right now. That contract gets rebid in the next three years. It allows them to bid against each other. It was active three years ago. Esseks commented that the railroad line may be closed in the future and there may be opportunity to get access to the other side. Huston stated that they did go down that path in their negotiations with OPPD, but they were not enamored with the idea. They want to keep that line active. It would be next to impossible to get state approval for that railroad crossing. NDOR does not grant new railroad crossings anymore. OPPD states that the railroad line is to remain active for their bidding on coal contracts. It is possible that it could be active in the future.

Strand wondered about removing the island to increase the detention if the road were ever to go through. Huston was hesitant to remove the island because of the agreement with the neighbors. Carlson believes that the City is only asking that they show how the street could be built. Gergen stated that he is not 100% satisfied that removing the island and the trees would meet the capacity for that roadway. He believes they would have to revise the site plan.

Huston explained that the developer did not spend any more time considering that design issue because they don't think it will ever happen.

Bartels advised that the 200' is not a design standard but more of a design practice. When a developer is designing public arterial streets, they are supposed to consult with the Public Works Department. Public Works had determined that 150' was too short on a higher speed arterial street. The 150' was not addressed by Public Works at the time of the approval by the City Council. Huston stated that the developer imposed the condition on themselves during the City Council debate. Bartels suggested that Public Works will probably ask for a longer lane if Public Works has to pay the difference between whatever Public Works wants and the 150'. However, Public Works thought this development should pay for it. Bartels took the position that Public Works will have a longer lane built, no matter who pays for the extra 50-100 feet.

CHANGE OF ZONE NO. 05026A

ACTION BY PLANNING COMMISSION:

November 9, 2005

Strand moved to approve the staff recommendation of conditional approval, with the amendments requested by the applicant, seconded by Pearson and carried 7-1: Krieser, Pearson, Larson, Carroll, Strand, Sunderman and Carlson voting 'yes'; Esseks voting 'no'; Taylor absent. This is a recommendation to the City Council.

PRELIMINARY PLAT NO. 05016

ACTION BY PLANNING COMMISSION:

November 9, 2005

Strand moved to approve the staff recommendation of conditional approval, with the amendments requested by the applicant, seconded by Larson.

Pearson moved to amend Condition #1.2.2 to change 150' to 200', seconded by Esseks. Pearson believes it is too early in the game to do 150'. Motion carried 8-0: Krieser, Esseks, Pearson, Larson, Carroll, Strand, Sunderman and Carlson voting 'yes'; Taylor absent.

Carroll moved to amend to retain Condition #1.1.4, seconded by Esseks. Carroll believes it is just too big of a facility for that site and that is why they are having the detention and access problems, and that is why the City Council asked for the access road to be established. They have got to design the road the way it should be, even though it might not be built. They should have to show it because that is what the City Council wanted and that is what they agreed upon.

Strand commented that this development crosses a lot of land. Why does the detention all have to be just on this site and not the park land and the Beal Slough area? Carroll believes that means they would be sending water to someone else. The idea of the detention pond is that this site retains its own detention. They used up all of the area because of what they are building. They should retain their water and not send it somewhere else.

Pearson agreed with Carroll. Her concern is that there are a lot of trees back there and that is one of the things so great about this property. If we require them to do this, she is afraid they will remove trees. She would hate to have the unintended consequence that they take out the trees. If the community decides to spend an enormous amount of money on this bridge, with a lot of people together, i.e. parks, the railroad, Country Meadows, etc., maybe there is some sort of land sharing down the road.

Larson thinks the possibility of building that road is so remote and the complications are so high.

Esseks is concerned that the railroad will close down and access to the west will become very desirable and we won't be prepared for it.

Pearson wondered whether it is possible that these trees are in jeopardy by this decision. Larson believes that they would take out the island and maybe some of the other trees. Carlson does not believe we can say that one implies the other. Esseks believes it sets a bad precedent to waive the design standards to save the trees. Carroll pointed out that the applicant had made a promise to the homeowners to save the trees so they will lose another commercial lot versus taking out the trees. There is other land available to increase the size of the detention pond. They have land that they can use for detention. They do not have to threaten to take the trees out. We should stay with the design standards that are best for the site.

Pearson requested that the motion be amended to add language to Condition #1.1.4, "while maintaining the stand of trees which the developer had reached agreement upon with the Country Meadows Homeowners Association". Carroll agreed.

Carroll wondered whether the Planning Commission could require that the detention pond be in the setback. Ray Hill suggested that if the Commission is concerned about the trees, a motion could be made that they save the trees based upon the commitment to the neighbors. If they have agreement with the neighbors to retain the trees, then they need to address that with the neighbors. A detention pond may be located in the setback.

Strand stated that she will not support this amendment because there is a lot of land – you've got Beal Slough wetlands running right through there. For this street to go through, even if it is abandoned and we can make it a bike trail, you've got to be able to cross a bike trail and you've got to be able to get through Beal Slough and through a residential area, and she doesn't think it is going to happen. We are asking a lot for something that is very impractical to ever occur.

Motion to retain Condition #1.1.4 and to add the language to retain the trees carried 5-3: Krieser, Pearson, Larson, Carroll and Carlson voting 'yes'; Esseks, Strand and Sunderman voting 'no'; Taylor absent.

Main motion for conditional approval, as amended, carried 8-0: Krieser, Esseks, Pearson, Larson, Carroll, Strand, Sunderman and Carlson voting 'yes'; Taylor absent. The action on the preliminary plat is final action, unless appealed to the City Council. The waiver of sidewalks along the north side of McIntosh Road and McIntosh Circle will be forwarded to the City Council for public hearing and action.



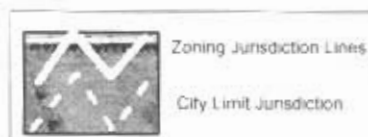
2005 aerial

**Preliminary Plat #05016 &
Change of Zone #05026A
Apple's Way
S 63rd St & Highway 2**

Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

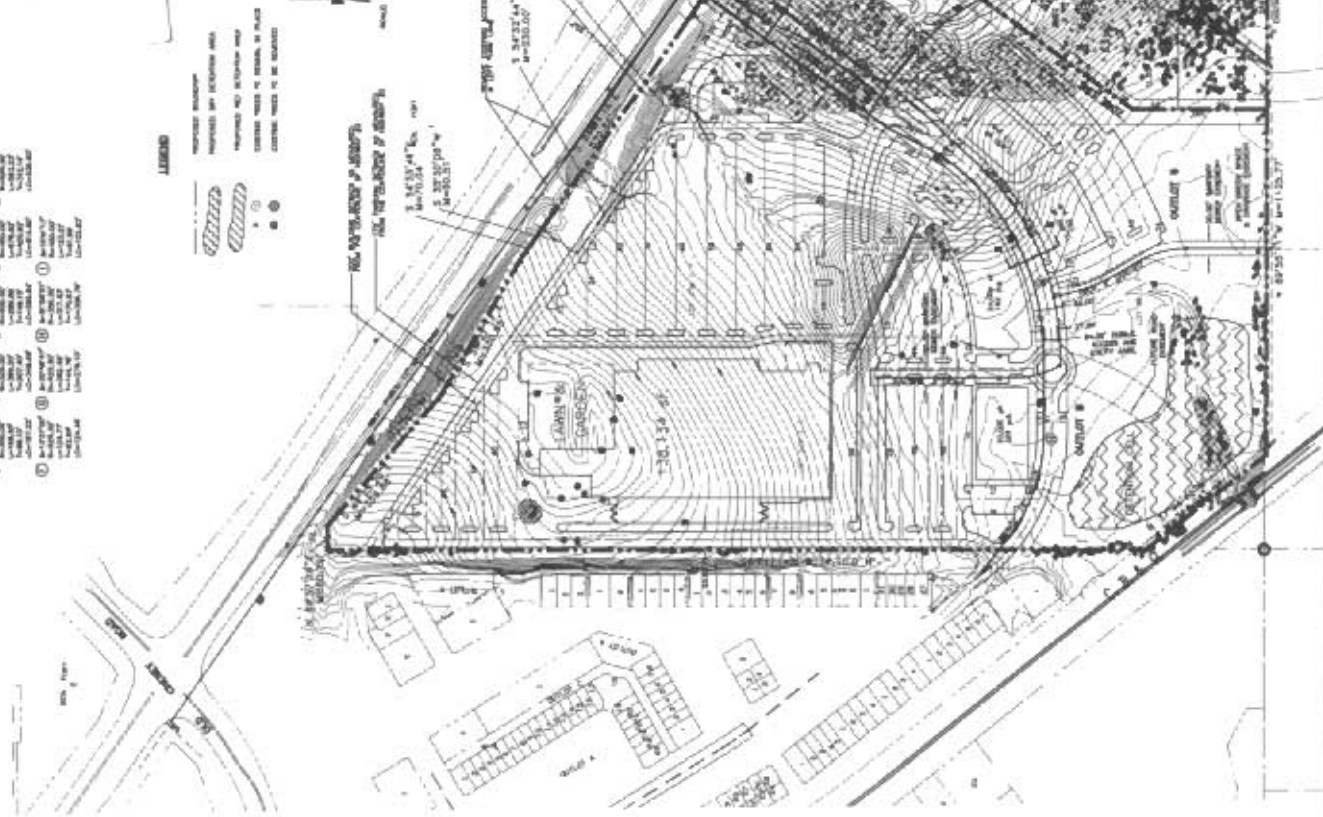
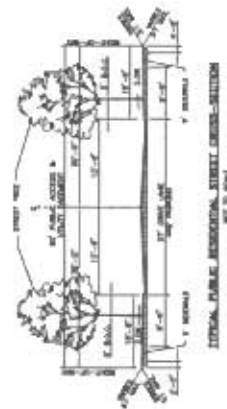
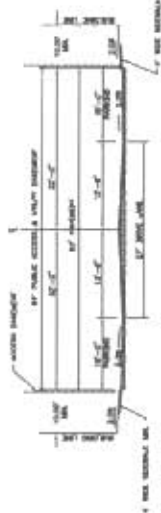
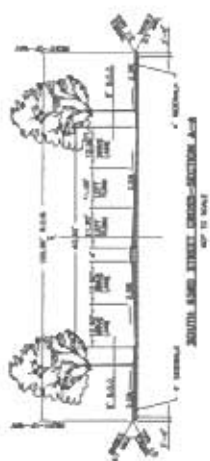
One Square Mile
Sec. 16 T09N R07E



APPLE'S WAY
PLANNED UNIT DEVELOPMENT
STEP PLAN

Nov. 30 2005

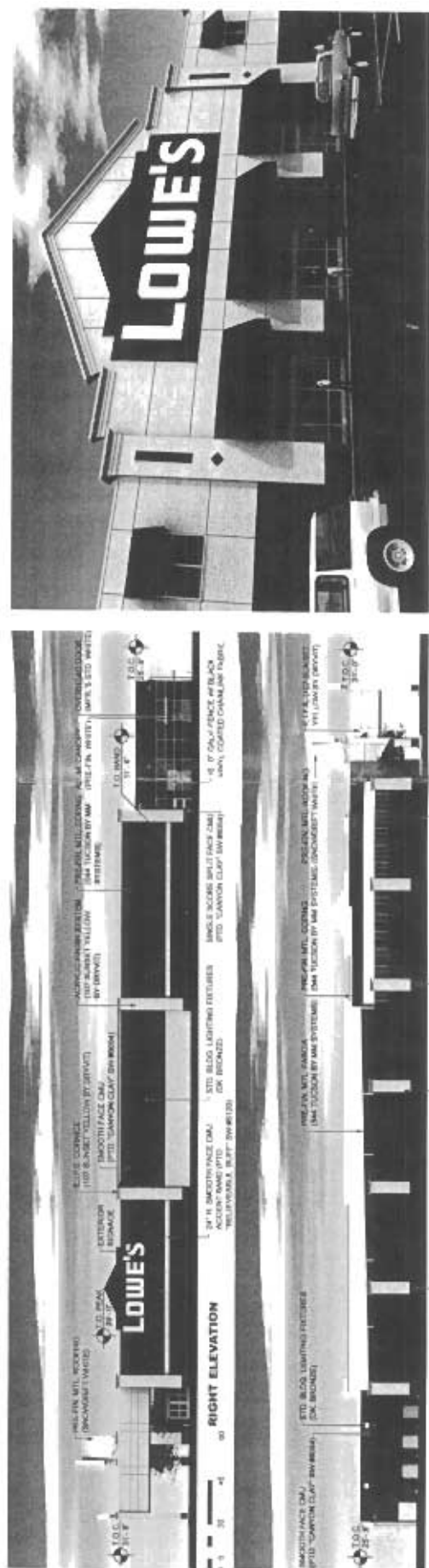
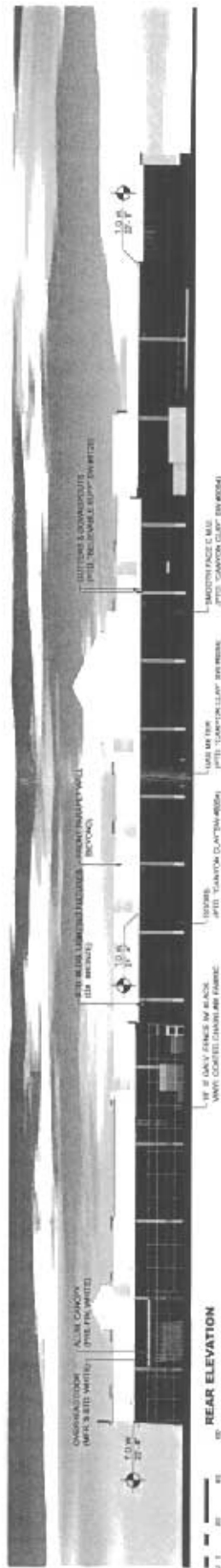
A. C. G.



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CONCLUSIONS

[illegible]



BIOGRAPHIC INFORMATION			
NUMBER	NAME	AGE	AREA
1	LOVE, B. J. J.	10	3000 S.P.
2	LOVE, C. J.	10	3000 S.P.
3	LOVE, D. J.	10	3000 S.P.
TOTAL BIRTHS			

South Lincoln, NE
117D 115 GCL
10/11/2005



NOT FOR CONSTRUCTION
REPRESENTATION ONLY

PUD LEGAL DESCRIPTION

REMAINING PORTION OF OUTLOT "E", COUNTRY MEADOWS, AND LOTS 36, 88, 123, 155 AND 156 IRREGULAR TRACTS, ALL LOCATED IN THE NORTH HALF OF SECTION 16, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6th P.M., LINCOLN, LANCASTER COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 123; THENCE ON THE NORTH LINE OF SAID LOT 123, ON AN ASSIGNED BEARING OF N 89°57'28"E, A DISTANCE OF 50.79'; THENCE ON THE SOUTHERLY RIGHT OF WAY LINE OF NEBRASKA HIGHWAY #2, FOR THE NEXT THIRTEEN (13) COURSES; S 48°25'20"E 359.86'; THENCE S 59°21'17"E 330.85'; THENCE S 54°33'46"E 70.04'; THENCE S 35°30'08"W 90.51'; THENCE S 54°32'44"E 230.00'; THENCE S 65°06'38"E 315.35'; THENCE N 35°20'01"E 32.94'; THENCE S 54°36'32"E 267.53'; THENCE S 54°29'46"E 618.68'; THENCE S 54°29'48"E 307.34'; THENCE S 47°32'08"E 110.81'; THENCE S 62°59'47"E 90.95'; THENCE S 54°31'20"E 482.57', TO A POINT OF INTERSECTION WITH THE NORTHERLY RIGHT OF WAY LINE OF SOUTH 66th STREET, SAID POINT BEING THE EASTERLY MOST POINT OF SAID REMAINING PORTION OF OUTLOT "E"; THENCE ON THE EASTERLY LINE OF SAID OUTLOT "E" AND THE NORTHERLY RIGHT OF WAY LINE OF SOUTH 66th STREET FOR THE NEXT THREE (3) COURSES; THENCE S 0°05'02"W 10.53'; THENCE S 35°06'21"W 127.02', TO A POINT ON CIRCULAR CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 513.12' AND A CENTRAL ANGLE OF 0°13'28"; THENCE ON THE CHORD OF SAID CURVE, S 34°54'22"W 2.01', TO THE SOUTHEAST CORNER OF SAID OUTLOT "E"; THENCE ON THE SOUTH LINE OF SAID OUTLOT "E", N 89°58'34"W 733.95'; THENCE ON THE SOUTH LINE OF SAID LOT 36, N 89°56'43"W 500.47'; THENCE ON THE SOUTH LINE OF SAID LOTS 88 AND 155, N 89°55'11"W 1125.77', TO A POINT ON THE SOUTHWESTERLY LINE OF SAID LOT 88; THENCE ON SAID SOUTHWESTERLY LINE, N 37°44'12"W 316.98', TO A POINT ON THE WEST LINE OF SAID LOT 88; THENCE ON THE WEST LINE OF SAID LOTS, 88 AND 123, N 0°01'47"W 1712.95', TO THE POINT OF BEGINNING, SAID TRACT CONTAINING AN AREA OF 61.70 ACRES, MORE OR LESS.

COLN

October 27, 2005

Mr. Brian Will
Planning Department, City of Lincoln
County-City Building
555 So. 10th Street
Lincoln, NE 68508

RE: Apple's Way PUD / Preliminary Plat
OA Project No. 2002-1220

Dear Mr. Will:

Below are the descriptions for the need of the requested waivers for the above referenced project.

Waivers to the PUD:

1. **Waive front yard setback to 0' in the B-2 PUD Zone with the exception of along Hwy 2, then the setbacks shall be 175' for drives and 200' for buildings.**

This waiver is being requested to allow the most flexibility with building and parking placement in regards to the internal roadway system. Apple's Way development would like the flexibility to create a downtown urban setting abutting the roadway system to encourage pedestrian movement. Therefore an internal front yard setback reduction is being asked.

2. **Waive rear yard setback to 30' abutting a residential district in the B-2 PUD Zone.**

Due to the placement of the entrance road to the site the reduction of the rear yard setback is necessitated to accommodate a realistic building envelope for the lots on the east side of the entrance. A 50' setback will be maintained in this area through the use of a 20' landscape easement placed on the abutting residential zoning. These are large residential lots to begin with and will allow the residential lots to utilize and enjoy the setback green space area rather than having it be located on the wrong side of the fence. A 100% landscape screen will be provided on the lot line together with maintaining the large hill to fully screen and more than adequately separate the commercial and residential uses.

3. **Waive height restriction to 52' for buildings that exceed 100,000 square feet in floor area.**

This waiver is being requested to accommodate a large front parapet peak at the entrance of the proposed Lowe's building. The peak is a standard prototypical

entrance of the store.

Mr. Brian Will
October 27, 2005
Page 2

Waivers to the Preliminary Plat:

1. **Waive requirement for lots to front public or private street and lot lines to be perpendicular to the street.**

Due to the triangular shape of the site it is not efficient to have the lot in the northwest corner of the site with a roadway network system for its access. Also due to the irregular shape of the site and curved roadways the lot lines are most efficient if they are not perpendicular to the street.

2. **Waive sidewalk requirement along Highway #2 for both the residential and commercial areas and the north side of McIntosh Road and McIntosh Circle.**

Since there are currently no sidewalks built or planned for along Highway #2 we are asking to continue this City policy and waive the sidewalks in Apples Way as well. The adjoining Country Meadows neighborhood does not have any sidewalks. The waiver of sidewalks on the north side of McIntosh Road and Circle is in keeping with the character of the existing neighborhood. Further, no residential lot will be more than 30' from a sidewalk connection by crossing to the south side of the road. Finally, the elimination of this sidewalk will be replaced with a walking path along and on the south side of the ponds that are to maintained as a commons. A walking path in this area would have more value to the residents than a sidewalk on the north side of the connection road.

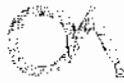
3. **Waive requirement for location of public sanitary sewer and public water main.**

Due to the likeliness of Highway #2 being widened in the future we are requesting the water main to parallel our commercial pavement and residential street network to avoid the possibility of the water main to be under pavement if Highway #2 is to be widened. The sanitary sewer does not follow a street network system due to the existing stub-out and irregularity of the lot layout as described in the waivers described above. The water main and sanitary sewer will be in easements dedicated to the city and are agreeable to Public Works.

Sincerely,

Tim Gergen, PE

cc: Bennie McCombs
Tom Huston
Peter Katt



OLSSON ASSOCIATES
ENGINEERS • PLANNERS • SCIENTISTS • SURVEYORS

October 19, 2005

Mr. Brian Will
Planning Department, City of Lincoln
County-City Building
555 So. 10th Street
Lincoln, NE 68508

RE: Apple's Way PUD / Preliminary Plat
OA Project No. 2002-1220

Dear Mr. Will:

Enclosed please find the following for the above-mentioned project:

1. Application for a Waiver to the PUD
2. Application fee (\$500)
3. Cover Sheet – 1 copy

On behalf of the Owner/Developer, Apple's Way, L.L.C. and Uno Properties, Inc., 1201 N Street, Suite 102, Lincoln, NE 68508, we are requesting an amendment to the Planned Unit Development (PUD) on the property shown on the enclosed site plan, all located in the north half of Section 16, Township 9 North, Range 7 East, City of Lincoln, Lancaster County, Nebraska (approximately 61.7 acres). We expect to be scheduled on the Planning Commission Agenda for the 9th of November simultaneously with the Apple's Way Preliminary Plat hearing.

We are requesting the following waivers to the PUD:

1. Waive front yard setback to 0' in the B-2 PUD Zone with the exception of along Hwy 2, then the setbacks shall be 175' for drives and 200' for buildings.
2. Waive rear yard setback to 30' abutting a residential district in the B-2 PUD Zone.
3. Waive height restriction to 52' for buildings that exceed 100,000 square feet in floor area.

Mr. Brian Will
October 19, 2005
Page 2

In addition, we would like to clarify and re-state the waivers to the submitted Preliminary Plat to the following:

1. Waive requirement for lots to front public or private street and lot lines to be perpendicular to the street.
2. Waive sidewalk requirement along Highway #2 for both the residential and commercial areas and the north side of McIntosh Road and McIntosh Circle.
3. Waive requirement for location of public sanitary sewer and public water main.

It is our intention to have the Amendment to the PUD and the Preliminary Plat proceed concurrently to avoid two separate public hearings. Please let us know the public hearing schedule for these two submittals.

Sincerely,



Tim Gergen, PE

Enclosures

cc: Bennie McCombs
Tom Huston
Peter Katt
Rob Otte

MOTION TO AMEND
Change of Zone #5026A
Apple's Way Planned Unit Development

CONDITIONS:

Site Specific:

1. After the applicant completes the following instructions and submits the documents and plans to the Planning Department and the plans are found to be acceptable, the application will be scheduled on the City Council's agenda:
 - 1.1 Revise the plans as follows:
 - 1.1.1 Show a 175' setback to parking and a 200' setback to buildings along Highway 2 as measured from the centerline of Highway 2.
 - ~~1.1.2 Show a 50' setback in the B-2 adjacent to the AGR and R-1.~~
 - 1.1.2 Revise Note 34 to reflect that the height of the building does not exceed 40' except the maximum allowed height is increased to 52' to accommodate architectural features.
 - 1.1.3 Revise the General Notes to be consistent with the approved plan for CZ#05026 Apple's Way PUD.
2. This approval adjusts setbacks in the B-2 to 0' except abutting a residential district which remains at 30', and along Highway 2 which is 175' to parking and 200' to buildings as measured from the Highway 2 centerline, and adjusts the maximum allowed height from 40' to 52' to accommodate architectural features.

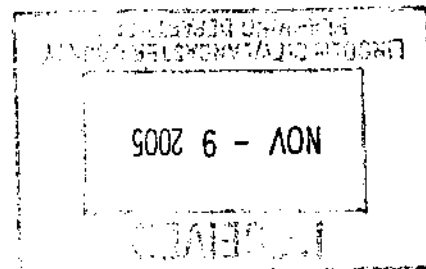
W. MICHAEL MORROW
TERRANCE A. POPPE
ROBERT R. OTTE
DAVID W. WATERMEIER
TIMOTHY C. PHILLIPS
JOEL G. LONOWSKI
JOSEPH E. DALTON
KELLY N. TOLLEFSEN
SCOTT E. TOLLEFSEN
NICHOLAS M. PROESCHL

**MORROW, POPPE, OTTE,
WATERMEIER & PHILLIPS, P.C.**
Attorneys at Law - A Limited Liability Organization

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Lincoln, Nebraska 68501-3439
E-MAIL ADDRESS:
info@morrowpoppelaw.com
WEBSITE:
www.morrowpoppelaw.com

November 9, 2005



Mary Bills-Strand, Chair
And Members of the Lincoln City/Lancaster County
Planning Commission
555 South 10th Street
Lincoln, Nebraska 68508

HAND DELIVERED

RE: Apples Way Planned Unit Development
Country Meadows Home Owner Association
Comprehensive Plan Amendment 04010
Change of Zone 05026
Meeting of November 9, 2005

Dear Chairperson Bills-Strand and Members of the Lincoln City/Lancaster County Planning Commission:

As you may recall, I represent Country Meadows Homeowners Association with regard to the above-referenced matter. Over the course of the last few months, I have been charged as the representative of the Board of the Country Meadows Homeowners Association to work with the developer as their project has advanced.

The Association first wants to express its sincere appreciation to the Commission and the Members of the Planning Staff in making sure that the Association has understood all of the intricacies of this project.

It is still fair to say that there may not be a clear consensus by the homeowners in the Association as to whether the Association should stand in support of or opposition to the current plan. However, as I have stated before, it is very clear that any support of the project by the Association residents is absolutely dependent upon the developer's promises to the Association embodied in the written Commitment that was originally presented to the City Council and their willingness to cooperate with the Association on issues that were not specifically spelled out in that Commitment.

Mary Bills-Strand, Chair
And Members of the Lincoln City/Lancaster County
Page 2
November 9, 2005

At this point I can, as the representative of the Board of Directors of the Country Meadows Homeowners Association say that the developer appears to have honored the terms of the Commitment and has agreed to certain changes, some incidental and some significant, in the plan as it has been developed over the course of time. The developer has been willing to work with the Association in a number of ways, and I think we have found and resolved several issues that were included in the original commitment and that came up as the plans were refined for submission.

Again, my remarks are neither an endorsement of or to be used in opposition to the project. There is still significant opposition to this development, but on behalf of the Association I am reporting that the developer has complied with the Commitment which was necessary to any support of this project.

Finally, the commitments made by the developer does not end with your approval of this project. They have an ongoing effort to cooperate with the Country Meadows Neighborhood Association all the way through the final plat process, and I have no reason to think they will not act accordingly.

On behalf of the Board and the Association, I want you to know they appreciate your consideration.

Sincerely,

MORROW, POPPE, OTTE,
WATERMEIER & PHILLIPS, P.C.

By:

Robert R. Otte

RRO/bc

c Country Meadows Homeowners Association

c/o Royce Mueller

c County Meadows Homeowners Association Board of Directors

c Thomas C. Huston

c William E. Langdon, Jr.

c Peter W. Katt